IN THE HIGH COURT OF BOMBAY AT GOA
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WRIT PETITION NO. 66 OF 2004

1. Gopi Rama Naik,
   s/o Rama @ Zeru Babuso
   Naik, married, businessman,
   aged 35 years,

2. Premanand Rama Naik,
   s/o Rama @ Zeru Babuso
   Naik, bachelor, service,
   aged 32 years, and

3. Narayan Rama Naik,
   s/o Rama @ Zeru Babuso
   Naik, businessman, aged
   30 years, all r/o
   Nagzar, Curti, Ponda, Goa. ... Petitioners

Versus

1. Pandurang Gopinath Gaunekar,
   s/o Gopinath Gaunekar,
   businessman, aged 36
   years, r/o Gaunem,
   Bnadora, Ponda, Goa,

2. Shamba Babuso Naik,
   s/o Babuso, married,
   businessman, aged 45
   years, and

3. Anand Babal Naik, s/o
   Babal Govind Naik,
   aged 35 years, both r/o
   Nagzar, Curti, Ponda, Goa. ... Respondents.

Shri V. Menezes, advocate for the petitioners.

Shri S. S. Kantak, Amicus Curiae, for the respondents.

CORAM : S. A. BOBDE, J.

DATE : 2nd July, 2004.

ORAL JUDGMENT

Rule returnable forthwith. Heard by consent.

2. The petitioners are aggrieved by the Order dated

11th December, 2003, refusing them permission to amend their written statement. The only amendment that was sought by the petitioners to their written statement was the addition of the words, "as tenants thereof". This addition was to sentences which contained a statement that the petitioners were cultivating paddy field bearing survey no.105/3 and a similar sentence regarding survey no.105/5. The petitioners sought to explain before the trial court that all that was left out by inadvertence was an explicit statement as to the character in which they were cultivating the said fields. According to the petitioners, it is after the change in counsel that this mistake was noticed. The trial Court has rejected the application for amendment of the written statement on the ground of delay, namely that the amendment was sought after a period of eleven years and also on the ground that it results in permitting the petitioners to change their stand. Having regard to the nature of the amendment, which is clarificatory, I am of the view that the learned trial Court has committed an error of law apparent on the face of the record in observing that it results in changing the stand. The petitioners had already stated that they were cultivating the land. All that they sought to introduce was the character in which they were cultivating the land. It does not result in any change of stand, which would prejudice the other side.

3. Shri Kantak, learned Amicus Curiae submitted that the amendment sought by the petitioners is as to the

character in which they held survey no.105/3, which is not the subject-matter of the suit at all. According to the learned counsel, the subject-matter of the suit is survey no.105/5. The learned Amicus Curiae therefore submitted that an irrelevant matter ought not to be allowed.

4. Shri Menezes, learned counsel for the petitioners, however submitted that the pleadings have been introduced in regard to survey no.105/3 in order to show that the petitioners were tenants not only in regard to the suit survey which is no.105/5, but also in regard to survey no.105/3. This is an additional pleading made in order to support the defence of being a tenant in cultivating possession of the land. In this view of the matter, I consider it appropriate in the interests of justice, to set aside the impugned Order and allow the petitioners' application for amendment of their written statement.

5. In the circumstances, Rule is made absolute and the amendment is allowed. By consent, the matter pending before the Mamlatdar bearing case no. TNC/7/99 is hereby directed to be decided expeditiously and in any case not later than one year from today. The Court expresses its gratitude to Shri Kantak, for having acted as Amicus Curiae.

S. A. BOBDE, J.